

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SOUTH JERSEY GAS COMPANY, :

: Plaintiff, : CIVIL ACTION NO. 1:09-CV-04194-
: RBK-JS

vs. :

MUELLER COMPANY, LTD., :
MUELLER GROUP, LLC, :
ECLIPSE, INC., ROCKFORD :
ECLIPSE, INC., ECLIPSE :
COMBUSTION AND/OR POWER :
EQUIPMENT CO. AND XYZ :
ENTITY (A-Z), :

Defendants :

ORDER

AND NOW, this day of , 2012, upon consideration of Plaintiff South Jersey Gas Company's Motion for Leave to File an Amended Complaint, and all responses thereto, it is hereby ORDERED and DECREED that said Motion is Granted. Plaintiff South Jersey Gas Company may file and serve the Amended Complaint attached as Exhibit "A" to its Motion for Leave to File an Amended Complaint within ten (10) days of the date of this Order.

BY THE COURT:

, J.

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ECLIPSE, INC., ROCKFORD :
ECLIPSE, INC., ECLIPSE :
COMBUSTION AND/OR POWER :
EQUIPMENT CO. AND XYZ :
ENTITY (A-Z), :

Defendants

NOTICE OF MOTION OF PLAINTIFF, SOUTH JERSEY GAS COMPANY
FOR LEAVE TO FILE AN AMENDED COMPLAINT

TO: Charles C. Eblen, Esquire
Shook, Hardy & Bacon
2555 Grand Boulevard
Kansas City, MO 64108

Jeannette E. Viala, Esquire
O'Connor Kimball, LLP
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Tiffany Alexander, Esquire
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PLEASE TAKE NOTICE, that Plaintiff, South Jersey Gas Company, shall move before the Honorable Joel Schneider, U.S.M.J., in the United States District Court for the District of New Jersey, Camden Vicinage, Mitchell H. Cohen U.S.

Courthouse, One John F. Gerry Plaza, Camden, New Jersey 08101, on the 3rd day of January, 2012, or as soon thereafter as counsel may be heard, for an order granting Plaintiff leave to file an Amended Complaint.

PLEASE TAKE FURTHER NOTICE that Plaintiff will rely upon the accompanying Motion for Leave to File Amended Complaint and Brief in Support thereof. A proposed form of Order is also included.

Respectfully submitted,

COZEN O'CONNOR, PC
Attorneys for Plaintiff, South Jersey Gas
Company

By: /s/ Dexter Hamilton

Daniel J. Bitonti, Esquire
Dexter Hamilton, Esquire

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ENTITY (A-Z), :

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**PLAINTIFF SOUTH JERSEY GAS COMPANY'S
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Plaintiff, South Jersey Gas Company ("South Jersey"), by and through its undersigned counsel, hereby files this Motion for Leave to File an Amended Complaint and in support thereof avers as follows:

1. On July 17, 2009, Plaintiff South Jersey Gas Company ("South Jersey" or "South Jersey Gas") filed a Complaint in the Superior Court of New Jersey for Atlantic County against Defendants Mueller Company, Ltd. and Mueller Group, LLC. (hereinafter collectively referred to as "Mueller" or "Mueller Defendants") and Eclipse, Inc., Rockford Eclipse, Inc. Eclipse Combustion, and Power Equipment Company (hereinafter collectively referred to as "Eclipse" or "Eclipse Defendants"), seeking money damages as a result of a breach of express

and implied warranties related to the sale of defective gas shut off valves. (Doc. No. 1-1). On August 17, 2009, the Mueller Appellees filed a Notice of Removal to this Court.

2. In lieu of an answer to the Complaint, the Mueller Defendants filed a Motion to Dismiss the Complaint or, in the Alternative, a Motion for Summary Judgment (“Mueller Motion”) (Doc. No. 10) and the Eclipse Defendants filed a Motion to Dismiss the Complaint (“Eclipse Motion”) (Doc. No. 11).

3. On April 27, 2010, the Court granted Mueller’s Motion for Summary Judgment. (Doc. Nos. 33, 34). The Court also converted the Eclipse Motion to a Motion for Summary Judgment and allowed Plaintiff ten (10) days to file an opposition. (*Id.*).

4. On May 7, 2010, South Jersey filed a Motion for Leave to File Amended Complaint. (Doc. No. 38).

5. On May 26, 2010, the Court granted the Eclipse Motion. (Doc. Nos. 50, 51).

6. On May 28, 2010, the Court denied South Jersey’s Motion for Leave to File Amended Complaint as “moot.” (Doc. No. 52).

7. South Jersey Gas filed a timely Notice of Appeal on June 25, 2010. (Doc. No. 53).

8. On May 13, 2011, the United States Court of Appeals for the Third Circuit issued an opinion, affirming this Court’s decision to grant the Eclipse and Mueller motions for summary judgment. The Third Circuit, however, vacated the May 28, 2010 order denying the motion for leave to amend as moot and remanded the matter for proper consideration of South Jersey’s Motion to Amend. *South Jersey Gas Co. v. Mueller Co., Ltd.*, 429 Fed. Appx. 128, 130 (3d Cir. 2011).

9. On remand, South Jersey filed a Renewed Motion for Leave to File an Amended Complaint on June 15, 2011, seeking to assert a claim for violation of the New Jersey Consumer Fraud Act (“CFA”). (Doc. No. 62).

10. On November 18, 2011, this Court denied South Jersey’s Renewed Motion for Leave to File an Amended Complaint, but granted leave to South Jersey to re-file its Motion to Amend. (Doc. No. 74).

11. South Jersey Gas requests leave to amend its Complaint to include a claim for violations of New Jersey’s Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, against Defendants. A copy of South Jersey’s Proposed Amended Complaint (“Amended Complaint”) is Exhibit “A” to this Motion.

12. The Proposed Amended Complaint sufficient states a cause of action for violation of the CFA.

13. South Jersey Gas is entitled to bring an action under the CFA and the Valves qualify as “merchandise” under the Act, as they are goods offered directly or indirectly to the public for sale. N.J.S.A. § 56:8-1.

14. South Jersey has adequately pleaded unlawful conduct, ascertainable loss, and a causal nexus.

15. The allegations in the proposed Amended Complaint, particularly Paragraphs 19-22, 24, and 26, are based on the deposition testimony of Charles Behm, the former Manager of Safety Training and Technical Services for South Jersey Gas. Mr. Behm was deposed in connection with *Duncan v. South Jersey Industries, Inc.*, No. CAM-L-0688-07 (N.J. Super. Camden County), the lawsuit arising out of the February 2005 explosion. Counsel for Eclipse was present at Mr. Behm’s deposition and questioned him.

16. The claim for violation of the CFA is not barred by the statute of limitations.

17. This motion is not brought out of bad faith or dilatory motive.

18. Plaintiff's motive is to bring all relevant related claims in a single proceeding to provide the efficient and speedy resolution of these issues. Granting the motion will not delay timeliness of conducting discovery or the trial of this matter.

19. Defendants will not be prejudiced by allowing South Jersey to amend its Complaint.

WHEREFORE, for all these reasons and those set forth in the accompanying Memorandum of Law, Plaintiff South Jersey Gas Company requests that the Court grant its Motion for Leave to File an Amended Complaint.

Respectfully submitted,
COZEN O'CONNOR, PC
Attorneys for Plaintiff, South Jersey Gas
Company

By: /s/ Dexter Hamilton
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Sara Anderson Frey (pro hac vice)
1900 Market Street
Philadelphia, PA 19103

Date: December 5, 2011

CERTIFICATE OF SERVICE

I, Dexter Hamilton, hereby certify that on the 5th day of December, 2011, I served a true and correct copy of Plaintiff's Motion for Leave to File an Amended Complaint, and Brief in Support thereof, to the following counsel via ECF service:

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By: /s/ Dexter Hamilton
Dexter Hamilton, Esquire